IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6504 OF 2004

Mohammed Maqbool Khan. .. Petitioner (Org.Defendant)

Vs.

Shaikh Riaysat Ali Driver. .. Respondent (Org.Plaintiff)

--

Shri A.A.Mirza & N.Y.Shaikh for the petitioner.

Shri P.S.Dani with Shri J.S.Yadav for the respondent.

--

CORAM : R.M.S.KHANDEPARKAR, J

DATED : 26th OCTOBER, 2004.

P.C.

1. Heard. The petitioner challenges the concurrent orders passed by the Courts below dismissing the application filed by the petitioner for setting aside the ex parte decree which was passed against the petitioner. The contention of the petitioner is that the matter was adjourned from 14th July, 2000 to 26th July, 2000. However, instead of taking up the matter on 26th July, 2000, it was taken up for hearing on 25th July, 2000, and thereafter it was adjourned to 20th September, 2000. But, the trial

Court disposed of the matter on 11th August, 2000 itself i.e. much prior to the date fixed for hearing of the matter. The contention of the petitioner is that on 26th July, 2000, the petitioner's advocate appeared in the Court but having been informed by the clerk of the advocate that the matter was adjourned to 20th September, 2000, he did not attend the hearing of the matter which took place subsequent to the 26th July, 2000 i.e. much prior to 20th September, 2000. Both the Courts below have disbelieved the petitioner's contention in this regard while observing that the records do not disclose that the advocate for the petitioner himself having attended the Court either on 26th July, 2000 or any other date thereafter. Undisputedly, no steps were taken by the petitioner and his advocate to record their presence in the Court on 26th July, 2000, neither any application was filed for taking the matter on board on 26th July, 2000 if the matter was not listed for hearing on the same day on the board of the trial Court, nor attention was drawn of the trial Court regarding the appearance of the petitioner and his advocate in the Court on 26th July, 2000. It is not also the case of the petitioner that steps were taken to verify the adjourned date of hearing of the matter either on 26th July, 2000 or any time thereafter till

20th September, 2000. In case, the petitioner was genuinely interested in contesting the matter, certainly knowing well that the matter was adjourned from 14th July, 2000 to 25th July, 2000 or 26th July, 2000 as alleged by the petitioner, for regarding of evidence, he would have certainly verified as to what had happened on 25th July, 2000 in order to avoid the consequence of ex part proceeding against the petitioner. Apparently, the petitioner did not bother to know anything about the proceedings which had taken place on 25th July, 2000 even though he claims to have appeared in the Court on 26th July, 2004.

2. In the circumstances, therefore, both the Courts below having arrived at the concurrent findings regarding failure on the part of the petitioner to disclose the reason for absence in the Court on the date when the matter was disposed of ex parte, no fault can be found with the said findings, nor the same warrant any interference in writ jurisdiction as it cannot be said that the Courts below have exercised their discretion either arbitrarily or illegally, in the facts and circumstances of the case. Being so, the petition is liable to be rejected and is accordingly rejected.